



Atty. Docket No.: 14098/1013

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Edberg, Stephen C.
Serial No.: 10/036,289
Filed: October 24, 2001
Entitled: "Detection of First Generation
Environmental Sourced Microbes in an
Environmentally-Derived Sample"

Examiner: Unknown

Group Art Unit: 1623

Conf. No.: 4480

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8a

I hereby certify that this correspondence (and any paper or fee referred to as being enclosed) is being deposited with the United States Post Office as First Class Mail on the date indicated below in an envelope addressed to Commissioner for Patents, Washington, D.C. 20231.

Kathleen Williams

Name of Person Mailing Paper

Signature of Person Mailing Paper

Commissioner for Patents
Washington, D.C. 20231

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
UNDER 37 CFR §§ 1.56, 1.97 AND 1.98**

Dear Sir:

In accordance with the duty of disclosure under 37 CFR § 1.56, Applicant submits this Information Disclosure Statement pursuant to 37 CFR §§ 1.97 and 1.98 in the above-identified application for consideration by the Patent Office. A U.S.P.T.O. Form 1449 is enclosed, as well as, for the Examiner's convenience, a copy of the cited document. Pursuant to CFR § 1.97(b)(3), because this Statement is being submitted before the first Office Action on the merits, no fee is required.

Applicant does not intend to represent that the document submitted herein is material prior art to this invention or that the list represents an exhaustive search of documents related to this invention.

The following document is submitted:

1. July 15, 2002 Ruling on appeal of the June 4, 2001 decision of the U.S. District Court for the District of Connecticut granting CPI – The Alternative Supplier, Inc.'s motion for summary judgment.

Serial No.: 10/036,289

In this ruling, the Court of Appeals for the Federal Circuit affirmed the District Court's grant of summary judgment of non-infringement of Stephen Edberg's U.S. patents 5,780,259 and 5,429,933. Based on its interpretation of the specification and prosecution histories of the '259 and '933 patents, the Court of Appeals affirmed the decision of the District Court construing the medium in the subject claims of both patents to be "a specific medium, i.e., one that supports log-phase, reproductive growth of only the target microbes" (page 6, lines 12-13).

Applicant submits that the independent claims of the present invention, which do not recite a "specific" medium, should not be interpreted to be so limited because they are not expressly limited regarding target and non-target growth rates, and because they do not rely on differences in growth rate for their novelty.

Applicant respectfully requests that the document submitted herein be considered and made of record in this application. Upon request, Applicants will provide the Examiner with copies of any pleadings associated with the above Ruling (briefs, hearing transcripts, etc.).

Respectfully submitted,



Date: August 14, 2002

Name: Kathleen M. Williams
Registration No.: 34,380
Customer No.: 29933
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Tel: 617-239-0100



Express Mail Label No.: EL326924173US
Date of Deposit: April 1, 2002

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Commissioner for Patents
Washington, D.C. 20231

**INFORMATION DISCLOSURE STATEMENT
UNDER 37 CFR §§§ 1.56, 1.97 AND 1.98**

Dear Sir:

In accordance with the duty of disclosure under 37 CFR § 1.56, Applicant submits this Information Disclosure Statement pursuant to 37 CFR §§ 1.97 and 1.98 in the above-identified application for consideration by the Patent Office. A listing of the cited documents is enclosed, as well as, for the Examiner's convenience, copies of documents (1-3) on the list. Pursuant to CFR § 1.97(b)(3), because this Statement is being submitted before the first Office Action on the merits, no fee is required. Please note that the rest of the documents listed on the PTO Form-1449 are **not** enclosed because they were filed already in the parent application (No.: 08/465,010).

Applicant does not intend to represent that any of the documents submitted herein are material prior art to this invention or that the list represents an exhaustive search of documents related to this invention.

The following documents are submitted:

1. November 24, 1997 Markman Ruling relating to U.S. Patent No. 4,925,789; Environetics, Inc. et al. v. Millipore Corp. (2:92CV825).

In this Ruling, U.S. District Court Judge Arterton held that the claim term which discloses a "specific medium" means a medium that will support reproductive growth of only the target microbe.

2. June 4, 2001 Ruling on Cross Motion for Summary Judgment relating to U.S. Patent Nos. 4,925,789, 5,429,933 and 5,780,259; Stephen C. Edberg et al. v. CPI (3:98CV716).

Serial No.: 10/0326289

In this Ruling granting summary judgment for the defendant, U.S. District Court judge Arterton held that the subject patents claim a medium in which only target microbes will reproduce in log phase growth. This ruling is currently under appeal to the Court of Appeals for the Federal Circuit.

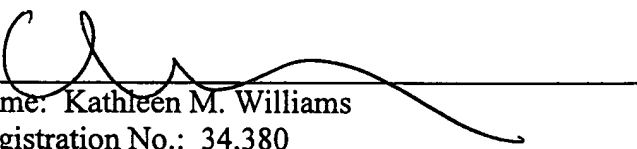
3. August 16, 2001 Ruling on Plaintiff's Motion for Reconsideration of the June 4, 2001 Ruling.

In this Ruling, U.S. District Court Judge Arterton denied plaintiffs' motion for reconsideration of the June 4 Ruling.

Applicant respectfully requests that the documents submitted herein be considered and made of record in this application. Upon request, Applicants will provide the Examiner with copies of any pleadings associated with the above Rulings (briefs, hearing transcripts, etc.).

Respectfully submitted,

Date: April 1, 2002



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Kathleen Williams

Name of Person Mailing Paper

Signature of Person Mailing Paper

Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL LETTER


Enclosed for filing in the above-identified patent application, please find the following documents:

1. Supplemental Information Disclosure Statement;
2. Form PTO-1449;
3. Copy of Cited Reference; and
4. Return Post Card.

The Commissioner for Patents is hereby authorized to charge any additional fees or credit any overpayment in the total fees to Deposit Account No. 16-0085, Reference No. 14098/1013. A duplicate of this transmittal letter is enclosed for this purpose.

Respectfully submitted,

Date: August 14, 2002


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EL32924173US

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.10

I hereby certify that the paper (and any paper or fee referred to as being enclosed) is being deposited with the United States Postal Service using Express Mail to Addressee Service, under 37 C.F.R. Section 1.10, **Express Mail Label No. EL326924173US** on this date, April / , 2002, postage prepaid, in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231.

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Palmer & Dodge LLP
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Docket # _____
Response due _____
Statutory period _____
Palmer & Dodge LLP
Patent Department